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**HOUSE BILL 258**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Donald L. Whitaker**

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**AN ACT**

**RELATING TO TAXATION; PROVIDING FOR PARTICIPATION IN  
NEGOTIATIONS ON THE STREAMLINED SALES TAX AGREEMENT; PROVIDING  
FOR ADMINISTRATIVE REFORMS; RECONCILING MULTIPLE AMENDMENTS TO  
THE SAME SECTION OF LAW IN LAWS 2003.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 9 of this act may be cited as the "Streamlined Sales  
and Use Tax Administration Act".**

**Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS. -- The  
legislature finds that a simplified sales tax and use tax  
system that treats transactions in a competitively neutral  
manner will strengthen and preserve sales taxes and use taxes  
as vital revenue sources for this state and its local  
governments and will help preserve the fiscal sovereignty of**

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1 this state. The legislature also finds that such a system will  
2 substantially reduce the administrative burdens of collection  
3 for sellers. While states have the sovereign right to set  
4 their own tax policies, states should cooperatively develop a  
5 streamlined sales tax and use tax system that is simplified,  
6 uniform and fair.

7 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
8 Streamlined Sales and Use Tax Administration Act:

9 A. "agreement" means the streamlined sales and use  
10 tax agreement;

11 B. "certified automated system" means software  
12 certified jointly by member states to:

13 (1) calculate the tax imposed by each  
14 jurisdiction on a transaction;

15 (2) determine the amount of tax to remit to  
16 the appropriate state; and

17 (3) maintain a record of the transaction;

18 C. "certified service provider" means an agent that  
19 performs all of the sales tax functions of a seller and that is  
20 certified jointly by member states to perform all of the sales  
21 tax functions of the seller;

22 D. "member state" means a state of the United  
23 States that enters into the agreement with another state and  
24 the District of Columbia if it enters into the agreement with  
25 another state;

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1 E. "person" means an individual, trust, estate,  
2 fiduciary, partnership, limited liability company, limited  
3 liability partnership, corporation and any other legal entity;

4 F. "sales tax" means the gross receipts tax levied  
5 pursuant to the Gross Receipts and Compensating Tax Act;

6 G. "seller" means a person making sales, leases and  
7 rentals of personal property and services; and

8 H. "use tax" means the compensating tax levied  
9 pursuant to the Gross Receipts and Compensating Tax Act.

10 Section 4. [NEW MATERIAL] AUTHORITY TO ENTER AGREEMENT. --

11 A. The secretary of taxation and revenue may enter  
12 into the agreement with one or more member states to simplify  
13 and modernize sales tax and use tax administration and to  
14 reduce the burden of tax compliance for sellers.

15 B. The secretary of taxation and revenue is  
16 authorized to:

17 (1) act jointly with member states to  
18 establish standards for certification of a certified automated  
19 system and establish performance standards for multistate  
20 sellers pursuant to the agreement;

21 (2) take actions reasonably required to  
22 implement the provisions of the Streamlined Sales and Use Tax  
23 Administration Act; and

24 (3) adopt rules with member states pursuant to  
25 the agreement.

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1 C. The secretary of taxation and revenue or the  
2 secretary's designee is authorized to represent this state  
3 before member states.

4 Section 5. [NEW MATERIAL] RELATIONSHIP TO STATE LAW. -- A  
5 provision of the agreement does not invalidate or amend any  
6 provision of state law. Implementation of a condition of the  
7 agreement shall be adopted by the legislature.

8 Section 6. [NEW MATERIAL] AGREEMENT REQUIREMENTS. -- The  
9 secretary of taxation and revenue shall not enter into the  
10 agreement unless the agreement:

11 A. sets restrictions to achieve more uniform state  
12 rates by limiting:

13 (1) the number of member state rates;  
14 (2) the application of maximums on the amount  
15 of member state taxes due on transactions; and

16 (3) the application of thresholds on the  
17 application of member state taxes;

18 B. establishes uniform standards for:

19 (1) sourcing transactions to taxing  
20 jurisdictions;

21 (2) administering exempt sales; and

22 (3) providing allowances that a seller can  
23 receive for bad debts;

24 C. requires member states to develop and adopt  
25 uniform definitions of sales tax and use tax terms that enable

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1 the member states to make policy choices consistent with the  
2 definitions;

3 D. provides for a certified automated system that  
4 allows a seller to register to collect and remit sales taxes  
5 and use taxes for each member state;

6 E. provides that registration with the certified  
7 automated system and the collection of a sales tax and a use  
8 tax in a member state will not be used to determine if the  
9 seller has a nexus with a member state for tax purposes;

10 F. provides for reduction of the burden of  
11 complying with local sales taxes and use taxes by:

12 (1) restricting variances between the member  
13 state and local tax bases;

14 (2) requiring each member state to administer  
15 the sales tax and use tax levied by a local jurisdiction within  
16 the member state so that a seller collecting and remitting the  
17 taxes will not be required to register or file a return with,  
18 remit funds to or be subject to an independent audit from a  
19 local taxing jurisdiction;

20 (3) restricting change in each local sales tax  
21 rate and use tax rate and setting an effective date for a  
22 change in the boundaries of a local taxing jurisdiction; and

23 (4) providing notice of a change in each local  
24 sales tax rate and use tax rate and of a change in the  
25 boundaries of a local taxing jurisdiction;

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1 G. outlines monetary allowances provided by member  
2 states to sellers and certified service providers;

3 H. requires each state to certify compliance with  
4 the terms of the agreement before becoming a member state and  
5 to maintain compliance with provisions of the agreement  
6 pursuant to the law of the member state while a member state;

7 I. requires each member state to adopt a uniform  
8 policy for certified service providers that protects the  
9 privacy of consumers and maintains the confidentiality of tax  
10 information; and

11 J. provides for the appointment of an advisory  
12 council of private sector representatives and an advisory  
13 council of nonmember state representatives to consult with in  
14 the administration of the agreement.

15 Section 7. [NEW MATERIAL] MEMBER STATES. -- The agreement  
16 is an accord among member states in furtherance of their  
17 governmental functions. The agreement permits each member  
18 state to establish and maintain a cooperative, uniform,  
19 simplified system to apply sales taxes and use taxes pursuant  
20 to the law of the member state.

21 Section 8. [NEW MATERIAL] LIMITED BINDING AND BENEFICIAL  
22 EFFECT. --

23 A. The agreement binds and benefits only this state  
24 and other member states. Only a member state is an intended  
25 beneficiary of the agreement. A benefit to a person other than

1 a member state is established by the law of this state and  
2 member states and not by the terms of the agreement.

3 B. A person shall not:

4 (1) have a cause of action or a defense  
5 pursuant to the agreement; and

6 (2) challenge an action or inaction of a  
7 department, agency, political subdivision or instrumentality of  
8 this state on the grounds that the action or inaction is not  
9 consistent with the agreement.

10 C. A law of this state or the application of the  
11 law is valid despite the inconsistency of the law or its  
12 application with the agreement.

13 Section 9. [NEW MATERIAL] LIABILITY. --

14 A. A certified service provider is liable for sales  
15 taxes and use taxes due from each member state on each sales  
16 transaction that it processes for the seller except as  
17 otherwise provided by this section. A seller that contracts  
18 with the certified service provider is not liable to this state  
19 for sales tax or use tax due on a transaction processed by the  
20 certified service provider unless the seller misrepresents the  
21 type of item it sells or commits fraud. In the absence of  
22 probable cause that the seller has committed fraud or made a  
23 material misrepresentation, the seller is not subject to audit  
24 on transactions processed by the certified service provider. A  
25 seller is subject to audit for a transaction not processed by

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1 the certified service provider. Member states acting jointly  
2 may:

3 (1) audit data pertaining to the seller that  
4 is stored in the certified automated system; and

5 (2) review procedures of the seller to  
6 determine if the certified automated system functions properly  
7 and the extent to which the transactions of the seller are  
8 processed by this certified service provider.

9 B. A certified service provider is responsible for  
10 the proper functioning of a certified automated system and is  
11 liable to this state for underpayments of tax attributable to  
12 system errors. A seller that uses a certified automated system  
13 is liable to this state for reporting and remitting tax.

14 C. A seller that has a proprietary system for  
15 determining the amount of tax due on a transaction and has  
16 agreed to establish a performance standard for the system is  
17 liable for failure of the system to meet the standard.

18 Section 10. Section 7-1-8 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,  
20 Section 5 and by Laws 2003, Chapter 439, Section 1) is amended  
21 to read:

22 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER  
23 INFORMATION. --It is unlawful for an employee of the department  
24 or a former employee of the department to reveal to an  
25 individual other than another employee of the department

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1 information contained in the return of a taxpayer made pursuant  
2 to a law subject to administration and enforcement under the  
3 provisions of the Tax Administration Act or any other  
4 information about a taxpayer acquired as a result of his  
5 employment by the department and not available from public  
6 sources, except:

7 A. to an authorized representative of another  
8 state; provided that the receiving state has entered into a  
9 written agreement with the department to use the information  
10 for tax purposes only and that the receiving state has enacted  
11 a confidentiality statute similar to this section to which the  
12 representative is subject;

13 B. to a representative of the secretary of the  
14 treasury or the secretary's delegate pursuant to the terms of a  
15 reciprocal agreement entered into with the federal government  
16 for exchange of the information;

17 C. to the multistate tax commission or its  
18 authorized representative; provided that the information is  
19 used for tax purposes only and is disclosed by the multistate  
20 tax commission only to states that have met the requirements of  
21 Subsection A of this section;

22 D. to a district court, an appellate court or a  
23 federal court:

24 (1) in response to an order thereof in an  
25 action relating to taxes to which the state is a party and in

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1 which the information sought is about a taxpayer who is party  
2 to the action and is material to the inquiry, in which case  
3 only that information may be required to be produced in court  
4 and admitted in evidence subject to court order protecting the  
5 confidentiality of the information and no more;

6 (2) in an action in which the department is  
7 attempting to enforce an act with which the department is  
8 charged or to collect a tax; or

9 (3) in any matter in which the department is a  
10 party and the taxpayer has put his own liability for taxes at  
11 issue, in which case only that information regarding the  
12 taxpayer who is party to the action may be produced, but this  
13 shall not prevent the disclosure of department policy or  
14 interpretation of law arising from circumstances of a taxpayer  
15 who is not a party;

16 E. to the taxpayer or to the taxpayer's authorized  
17 representative; provided, however, that nothing in this  
18 subsection shall be construed to require any employee to  
19 testify in a judicial proceeding except as provided in  
20 Subsection D of this section;

21 F. information obtained through the administration  
22 of a law not subject to administration and enforcement under  
23 the provisions of the Tax Administration Act to the extent that  
24 release of that information is not otherwise prohibited by law;

25 G. in a manner, for statistical purposes, that the

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1 information revealed is not identified as applicable to an  
2 individual taxpayer;

3 H. with reference to information concerning the tax  
4 on tobacco imposed by Sections 7-12-1 through 7-12-13 and  
5 Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the  
6 legislature for a valid legislative purpose or to the attorney  
7 general for purposes of Section 6-4-13 NMSA 1978 and the master  
8 settlement agreement defined in Section 6-4-12 NMSA 1978;

9 I. to a transferee, assignee, buyer or lessor of a  
10 liquor license, the amount and basis of an unpaid assessment of  
11 tax for which his transferor, assignor, seller or lessee is  
12 liable;

13 J. to a purchaser of a business as provided in  
14 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis  
15 of an unpaid assessment of tax for which the purchaser's seller  
16 is liable;

17 K. to a municipality of this state upon its request  
18 for a period specified by that municipality within the twelve  
19 months preceding the request for the information by that  
20 municipality:

21 (1) the names, taxpayer identification numbers  
22 and addresses of registered gross receipts taxpayers reporting  
23 gross receipts for that municipality under the Gross Receipts  
24 and Compensating Tax Act or a local option gross receipts tax  
25 imposed by that municipality. The department may also release

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1 the information described in this paragraph quarterly or upon  
2 such other periodic basis as the secretary and the municipality  
3 may agree; and

4 (2) information indicating whether persons  
5 shown on a list of businesses located within that municipality  
6 furnished by the municipality have reported gross receipts to  
7 the department but have not reported gross receipts for that  
8 municipality under the Gross Receipts and Compensating Tax Act  
9 or a local option gross receipts tax imposed by that  
10 municipality.

11 The employees of municipalities receiving information as  
12 provided in this subsection shall be subject to the penalty  
13 contained in Section 7-1-76 NMSA 1978 if that information is  
14 revealed to individuals other than other employees of the  
15 municipality in question or the department;

16 L. to the commissioner of public lands for use in  
17 auditing that pertains to rentals, royalties, fees and other  
18 payments due the state under land sale, land lease or other  
19 land use contracts; the commissioner of public lands and  
20 employees of the commissioner are subject to the same  
21 provisions regarding confidentiality of information as  
22 employees of the department;

23 M the department shall furnish, upon request by  
24 the child support enforcement division of the human services  
25 department, the last known address with date of all names

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1 certified to the department as being absent parents of children  
2 receiving public financial assistance. The child support  
3 enforcement division personnel shall use such information only  
4 for the purpose of enforcing the support liability of the  
5 absent parents and shall not use the information or disclose it  
6 for any other purpose; the child support enforcement division  
7 and its employees are subject to the provisions of this section  
8 with respect to any information acquired from the department;

9 N. with respect to the tax on gasoline imposed by  
10 the Gasoline Tax Act, the department shall make available for  
11 public inspection at monthly intervals a report covering the  
12 number of gallons of gasoline and ethanol blended fuels  
13 received and deducted, and the amount of tax paid by each  
14 person required to file a gasoline tax return or pay gasoline  
15 tax in the state of New Mexico;

16 O. the identity of a rack operator, importer,  
17 blender, supplier or distributor and the number of gallons  
18 reported on returns required under the Gasoline Tax Act,  
19 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a  
20 rack operator, importer, blender, distributor or supplier, but  
21 only when it is necessary to enable the department to carry out  
22 its duties under the Gasoline Tax Act, the Special Fuels  
23 Supplier Tax Act or the Alternative Fuel Tax Act;

24 P. the department shall release upon request only  
25 the names and addresses of all gasoline or special fuel

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1 distributors, wholesalers and retailers to the New Mexico  
2 department of agriculture, the employees of which are thereby  
3 subject to the penalty contained in Section 7-1-76 NMSA 1978 if  
4 that information is revealed to individuals other than  
5 employees of either the New Mexico department of agriculture or  
6 the department;

7 Q. the department shall answer all inquiries  
8 concerning whether a person is or is not a registered taxpayer  
9 for tax programs that require registration, but nothing in this  
10 subsection shall be construed to allow the department to answer  
11 inquiries concerning whether a person has filed a tax return;

12 R. upon request of a municipality or county of this  
13 state, the department shall permit officials or employees of  
14 the municipality or county to inspect the records of the  
15 department pertaining to an increase or decrease to a  
16 distribution or transfer made pursuant to Section 7-1-6.15 NMSA  
17 1978 for the purpose of reviewing the basis for the increase or  
18 decrease. The municipal or county officials or employees  
19 receiving information provided in this subsection shall not  
20 reveal that information to any person other than another  
21 employee of the municipality or the county, the department or a  
22 district court, an appellate court or a federal court in a  
23 proceeding relating to a disputed distribution and in which  
24 both the state and the municipality or county are parties.  
25 Information provided pursuant to provisions of this subsection

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1 that is revealed other than as provided in this subsection  
2 shall subject the person revealing the information to the  
3 penalties contained in Section 7-1-76 NMSA 1978;

4 S. to a county of this state that has in effect a  
5 local option gross receipts tax imposed by the county upon its  
6 request for a period specified by that county within the twelve  
7 months preceding the request for the information by that  
8 county:

9 (1) the names, taxpayer identification numbers  
10 and addresses of registered gross receipts taxpayers reporting  
11 gross receipts either for that county in the case of a local  
12 option gross receipts tax imposed on a countywide basis or only  
13 for the areas of that county outside of any incorporated  
14 municipalities within that county in the case of a county local  
15 option gross receipts tax imposed only in areas of the county  
16 outside of any incorporated municipalities. The department may  
17 also release the information described in this paragraph  
18 quarterly or upon such other periodic basis as the secretary  
19 and the county may agree;

20 (2) in the case of a local option gross  
21 receipts tax imposed by a county on a countywide basis,  
22 information indicating whether persons shown on a list of  
23 businesses located within the county furnished by the county  
24 have reported gross receipts to the department but have not  
25 reported gross receipts for that county under the Gross

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1 Receipts and Compensating Tax Act or a local option gross  
2 receipts tax imposed by that county on a countywide basis; and

3 (3) in the case of a local option gross  
4 receipts tax imposed by a county only on persons engaging in  
5 business in that area of the county outside of incorporated  
6 municipalities, information indicating whether persons on a  
7 list of businesses located in that county outside of the  
8 incorporated municipalities but within that county furnished by  
9 the county have reported gross receipts to the department but  
10 have not reported gross receipts for that county outside of the  
11 incorporated municipalities within that county under the Gross  
12 Receipts and Compensating Tax Act or a local option gross  
13 receipts tax imposed by the county only on persons engaging in  
14 business in that county outside of the incorporated  
15 municipalities.

16 The officers and employees of counties receiving  
17 information as provided in this subsection shall be subject to  
18 the penalty contained in Section 7-1-76 NMSA 1978 if the  
19 information is revealed to individuals other than other  
20 officers or employees of the county in question or the  
21 department;

22 T. to authorized representatives of an Indian  
23 nation, tribe or pueblo, the territory of which is located  
24 wholly or partially within New Mexico, pursuant to the terms of  
25 a reciprocal agreement entered into with the Indian nation,

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1 tribe or pueblo for the exchange of that information for tax  
2 purposes only; provided that the Indian nation, tribe or pueblo  
3 has enacted a confidentiality statute similar to this section;

4 U. information with respect to the taxes or tax  
5 acts administered pursuant to Subsection B of Section 7-1-2  
6 NMSA 1978, except that:

7 (1) information for or relating to a period  
8 prior to July 1, 1985 with respect to Sections 7-25-1 through  
9 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only  
10 to a committee of the legislature for a valid legislative  
11 purpose;

12 (2) except as provided in Paragraph (3) of  
13 this subsection, contracts and other agreements between the  
14 taxpayer and other parties and the proprietary information  
15 contained in those contracts and agreements shall not be  
16 released without the consent of all parties to the contract or  
17 agreement; and

18 (3) audit workpapers and the proprietary  
19 information contained in the workpapers shall not be released  
20 except to:

21 (a) the minerals management service of  
22 the United States department of the interior, if production  
23 occurred on federal land;

24 (b) a person having a legal interest in  
25 the property that is subject to the audit;

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1 (c) a purchaser of products severed from  
2 a property subject to the audit; or

3 (d) the authorized representative of any  
4 of the persons in Subparagraphs (a) through (c) of this  
5 paragraph. This paragraph does not prohibit the release of  
6 proprietary information contained in the workpapers that is  
7 also available from returns or from other sources not subject  
8 to the provisions of this section;

9 V. information with respect to the taxes, surtaxes,  
10 advance payments or tax acts administered pursuant to  
11 Subsection C of Section 7-1-2 NMSA 1978;

12 W. to the public regulation commission, information  
13 with respect to the Corporate Income and Franchise Tax Act  
14 required to enable the commission to carry out its duties;

15 X. to the state racing commission, information with  
16 respect to the state, municipal and county gross receipts taxes  
17 paid by [~~race tracks~~] racetracks;

18 Y. upon request of a corporation authorized to be  
19 formed under the Educational Assistance Act, the department  
20 shall furnish the last known address and the date of that  
21 address of every person certified to the department as an  
22 absent obligor of an educational debt due and owed to the  
23 corporation or that the corporation has lawfully contracted to  
24 collect. The corporation and its officers and employees shall  
25 use that information only to enforce the educational debt

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1 obligation of the absent obligors and shall not disclose that  
2 information or use it for any other purpose;

3 Z. a decision and order made by a hearing officer  
4 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest  
5 filed with the secretary on or after July 1, 1993;

6 AA. information required by a provision of the Tax  
7 Administration Act to be made available to the public by the  
8 department;

9 BB. upon request by the Bernalillo county  
10 metropolitan court, the department shall furnish the last known  
11 address and the date of that address for every person the court  
12 certifies to the department as a person who owes fines, fees or  
13 costs to the court or who has failed to appear pursuant to a  
14 court order or a promise to appear;

15 CC. upon request by a magistrate court, the  
16 department shall furnish the last known address and the date of  
17 that address for every person the court certifies to the  
18 department as a person who owes fines, fees or costs to the  
19 court or who has failed to appear pursuant to a court order or  
20 a promise to appear;

21 DD. to the national tax administration agencies of  
22 Mexico and Canada, provided the agency receiving the  
23 information has entered into a written agreement with the  
24 department to use the information for tax purposes only and is  
25 subject to a confidentiality statute similar to this section;

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1 EE. to a district attorney, a state district court  
2 grand jury or federal grand jury for an investigation of or  
3 proceeding related to an alleged criminal violation of the tax  
4 laws;

5 FF. to a third party subject to a subpoena or levy  
6 issued pursuant to the provisions of the Tax Administration  
7 Act, the identity of the taxpayer involved, the taxes or tax  
8 acts involved and the nature of the proceeding; ~~and~~

9 GG. to the gaming control board, tax returns of  
10 license applicants and their affiliates as ~~defined~~ provided  
11 in Subsection E of Section 60-2E-14 NMSA 1978; and

12 HH. any written ruling on questions of evidence or  
13 procedure made by a hearing officer pursuant to Section 7-1-24  
14 NMSA 1978, provided that the name and identification number of  
15 the taxpayer requesting the ruling shall not be provided."

16 Section 11. Section 7-1-17 NMSA 1978 (being Laws 1965,  
17 Chapter 248, Section 20, as amended) is amended to read:

18 "7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS. --

19 A. If the secretary or the secretary's delegate  
20 determines that a taxpayer is liable for taxes in excess of  
21 ~~[ten dollars (\$10.00)]~~ twenty-five dollars (\$25.00) that are  
22 due and that have not been previously assessed to the taxpayer,  
23 the secretary or the secretary's delegate shall promptly assess  
24 the amount thereof to the taxpayer.

25 B. Assessments of tax are effective:

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1 (1) when a return of a taxpayer is received by  
2 the department showing a liability for taxes;

3 (2) when a document denominated "notice of  
4 assessment of taxes", issued in the name of the secretary, is  
5 mailed or delivered in person to the taxpayer against whom the  
6 liability for tax is asserted, stating the nature and amount of  
7 the taxes assertedly owed by the taxpayer to the state,  
8 demanding of the taxpayer the immediate payment of the taxes  
9 and briefly informing the taxpayer of the remedies available to  
10 the taxpayer; or

11 (3) when an effective jeopardy assessment is  
12 made as provided in the Tax Administration Act.

13 C. Any assessment of taxes or demand for payment  
14 made by the department is presumed to be correct.

15 D. When taxes have been assessed to any taxpayer  
16 and remain unpaid, the secretary or the secretary's delegate  
17 may demand payment at any time except as provided otherwise by  
18 Section 7-1-19 NMSA 1978. "

19 Section 12. Section 7-1-24 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 26, as amended) is amended to read:

21 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE. --

22 A. Any taxpayer may dispute the assessment to the  
23 taxpayer of any amount of tax, the application to the taxpayer  
24 of any provision of the Tax Administration Act or the denial of  
25 or failure to either allow or deny a claim for refund made in

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1 accordance with Section 7-1-26 NMSA 1978 by filing with the  
2 secretary a written protest against the assessment or against  
3 the application to the taxpayer of the provision or against the  
4 denial of or the failure to allow or deny the amount claimed to  
5 have been erroneously paid as tax. Every protest shall  
6 identify the taxpayer and the tax involved and state the  
7 grounds for the taxpayer's protest and the affirmative relief  
8 requested. The statement of grounds for protest shall specify  
9 individual grounds upon which the protest is based and a  
10 summary statement of the evidence expected to be produced  
11 supporting each ground asserted, if any; provided that the  
12 taxpayer may supplement the statement at any time prior to ten  
13 days before any hearing conducted on the protest pursuant to  
14 Subsection D of this section or, if a scheduling order has been  
15 issued, in accordance with the scheduling order. The secretary  
16 may, in appropriate cases, provide for an informal conference  
17 before setting a hearing of the protest or acting on any claim  
18 for refund.

19 B. Any protest by a taxpayer shall be filed within  
20 thirty days of the date of the mailing to the taxpayer by the  
21 department of the notice of assessment or mailing to, or  
22 service upon, the taxpayer of other peremptory notice or  
23 demand, or the date of mailing or filing a return. Upon  
24 written request of the taxpayer made within the time permitted  
25 for filing a protest, the secretary may grant an extension of

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1 time, not to exceed sixty days, within which to file the  
2 protest. If a protest is not filed within the time required  
3 for filing a protest or, if an extension has been granted,  
4 within the extended time, the secretary may proceed to enforce  
5 collection of any tax if the taxpayer is delinquent within the  
6 meaning of Section 7-1-16 NMSA 1978. Upon written request of  
7 the taxpayer made after the time for filing a protest but not  
8 more than sixty days after the expiration of the time for  
9 filing a protest, the secretary may grant a retroactive  
10 extension of time, not to exceed sixty days, within which to  
11 file the protest; provided that the taxpayer demonstrates to  
12 the secretary's satisfaction that the taxpayer was not able to  
13 file a protest or to request an extension within the time to  
14 file the protest and that the grounds for the protest have  
15 substantial merit. The fact that the department did not mail  
16 the assessment or other peremptory notice or demand by  
17 certified or registered mail or otherwise demand and receive  
18 acknowledgment of receipt by the taxpayer shall not be deemed  
19 to demonstrate the taxpayer's inability to protest or request  
20 an extension within the time for filing a protest within the  
21 required time. The secretary shall not grant a retroactive  
22 extension if a levy has already been served under Section  
23 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been  
24 made under Section 7-1-59 NMSA 1978. No proceedings other than  
25 those to enforce collection of any amount assessed as tax and

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1 to protect the interest of the state by injunction, as provided  
2 in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and  
3 7-1-58 NMSA 1978, are stayed by timely filing of a protest  
4 under this section.

5 C. Claims for refund shall be filed as provided for  
6 in Section 7-1-26 NMSA 1978.

7 D. Upon timely receipt of a protest, the department  
8 or hearing officer shall promptly set a date for hearing and on  
9 that date hear the protest or claim.

10 E. A hearing officer shall be designated by the  
11 secretary to conduct the hearing. Taxpayers may appear at a  
12 hearing for themselves or be represented by a bona fide  
13 employee, an attorney, a certified public accountant or a  
14 registered public accountant. Hearings shall not be open to  
15 the public except upon request of the taxpayer and may be  
16 postponed or continued at the discretion of the hearing  
17 officer.

18 F. A hearing officer shall not engage or  
19 participate in any way as an employee of the department in the  
20 areas of enforcement or formulating general tax policy other  
21 than to conduct hearings. A taxpayer may request that the  
22 secretary determine whether a hearing officer has engaged or  
23 participated in tax policy or enforcement in a way that might  
24 reasonably be expected to affect the hearing officer's  
25 impartiality in a particular matter. The secretary may

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1 designate another hearing officer for the matter to avoid  
2 actual or apparent prejudice.

3 G. A hearing officer shall not engage in ex-parte  
4 communications concerning the substantive issues of any matter  
5 that has been protested while that matter is still pending. If  
6 the secretary finds that a hearing officer has engaged in  
7 prohibited ex-parte communications, the secretary shall  
8 designate another hearing officer for that matter.

9 H. In hearings before the hearing officer, the  
10 taxpayer may elect that the Rules of Civil Procedure for the  
11 District Courts apply to the proceedings. Otherwise, the  
12 technical rules of evidence shall not apply, but in ruling on  
13 the admissibility of evidence, the hearing officer may require  
14 reasonable substantiation of statements or records tendered,  
15 the accuracy or truth of which is in reasonable doubt. A  
16 taxpayer may request a written ruling on any contested question  
17 of evidence in a matter in which the taxpayer has filed a  
18 written protest and that protest is pending.

19 I. In hearings before the hearing officer, the  
20 Rules of Civil Procedure for the District Courts shall not  
21 apply unless the taxpayer elects, but the hearing shall be  
22 conducted so that both complaints and defenses are amply and  
23 fairly presented. To this end, the hearing officer shall hear  
24 arguments, permit discovery, entertain and dispose of motions,  
25 require written expositions of the case as the circumstances

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1 justify and render a decision in accordance with the law and  
2 the evidence presented and admitted. A taxpayer may request a  
3 written ruling on any contested question of procedure in a  
4 matter in which the taxpayer has filed a written protest and  
5 that protest is pending.

6 J. In the case of the hearing of any protest, the  
7 hearing officer shall make and preserve a complete record of  
8 the proceedings. At the beginning of the hearing, the hearing  
9 officer shall inform the taxpayer of the taxpayer's right to  
10 representation. The hearing officer, within thirty days of the  
11 hearing, shall inform the protestant in writing of the  
12 decision, informing the protestant at the same time of the  
13 right to, and the requirements for perfection of, an appeal  
14 from the decision to the court of appeals and of the  
15 consequences of a failure to appeal. The written decision  
16 shall embody an order granting or denying the relief requested  
17 or granting such part thereof as seems appropriate.

18 K. A taxpayer with two or more protests containing  
19 related issues may request that such protests be combined and  
20 heard jointly. The designated hearing officer shall grant the  
21 request to combine protests unless it would create an  
22 unreasonable burden on the department.

23 L. Nothing in this section shall be construed to  
24 authorize any criminal proceedings hereunder or to authorize an  
25 administrative protest of the issuance of a subpoena or

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1 summons. "

2 Section 13. Section 7-1-26 NMSA 1978 (being Laws 1965,  
3 Chapter 248, Section 28, as amended) is amended to read:

4 "7-1-26. CLAIM FOR REFUND. --

5 A. Any person who believes that an amount of tax  
6 has been paid by or withheld from that person in excess of that  
7 for which the person was liable, who has been denied any credit  
8 or rebate claimed or who claims a prior right to property in  
9 the possession of the department pursuant to a levy made under  
10 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim  
11 a refund by directing to the secretary, within the time limited  
12 by the provisions of Subsections D, E and F of this section, a  
13 written claim for refund. Except as provided in Subsection J  
14 of this section, a refund claim shall include the taxpayer's  
15 name, address and identification number, the type of tax for  
16 which a refund is being claimed, the sum of money being  
17 claimed, the period for which overpayment was made and the  
18 basis for the refund. As used in this subsection, "basis for  
19 the refund" means a brief statement of the facts and the law on  
20 which the claim is based. Upon receipt of a claim for a refund  
21 of gross receipts tax, compensating tax, personal income tax  
22 for years other than the current tax year or corporate income  
23 tax for years other than the current tax year, other than a  
24 claim described in Subsection J of this section, the department  
25 shall promptly send a notice to the person filing the claim

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1 stating that it has received the claim and indicating whether  
2 it considers the claim to be complete. The department and the  
3 person filing the claim may agree to designate the claim as a  
4 protective claim.

5 B. The secretary or the secretary's delegate may  
6 allow the claim in whole or in part or may deny the claim.

7 (1) If the claim is denied in whole or in part  
8 in writing, no claim may be refiled with respect to that which  
9 was denied but the person, within ninety days after either the  
10 mailing or delivery of the denial of all or any part of the  
11 claim, may elect to pursue one, but not more than one, of the  
12 remedies in Subsection C of this section.

13 (2) For a claim other than a protective claim,  
14 if the department has neither granted nor denied any portion of  
15 a claim for refund within one hundred twenty days of the date  
16 the claim was mailed or delivered to the department, the person  
17 may refile it within the time limits set forth in Subsection C  
18 of this section or may within ninety days elect to pursue one,  
19 but only one, of the remedies in Subsection C of this section.  
20 After the expiration of the two hundred ten days from the date  
21 the claim was mailed or delivered to the department, the  
22 department may not approve or disapprove the claim unless the  
23 person has pursued one of the remedies under Subsection C of  
24 this section.

25 (3) For a protective claim, if the department

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1 has not acted within one hundred twenty days from either the  
2 date of a final decision in the lead case from which appeal may  
3 not be taken or the last date on which appeal may be taken when  
4 no appeal is taken, any part of the claim not granted or denied  
5 is denied.

6 C. A person may elect to pursue one, but only one,  
7 of the remedies in Paragraphs (1) and (2) of this subsection.  
8 In any case, if a person does timely pursue more than one  
9 remedy, the person shall be deemed to have elected the first  
10 remedy invoked. The remedies are as follows:

11 (1) the person may direct to the secretary a  
12 written protest against the denial of, or failure to either  
13 allow or deny the claim or portion thereof, which shall be set  
14 for hearing by a hearing officer designated by the secretary  
15 promptly after the receipt of the protest in accordance with  
16 the provisions of Section 7-1-24 NMSA 1978, and pursue the  
17 remedies of appeal from decisions adverse to the protestant as  
18 provided in Section 7-1-25 NMSA 1978; or

19 (2) the person may commence a civil action in  
20 the district court for Santa Fe county by filing a complaint  
21 setting forth the circumstance of the claimed overpayment,  
22 alleging that on account thereof the state is indebted to the  
23 plaintiff in the amount stated, together with any interest  
24 allowable, demanding the refund to the plaintiff of that amount  
25 and reciting the facts of the claim for refund. The plaintiff

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1 or the secretary may appeal from any final decision or order of  
2 the district court to the court of appeals.

3 D. Except as otherwise provided in Subsections E  
4 and F of this section, no credit or refund of any amount may be  
5 allowed or made to any person unless as the result of a claim  
6 made by that person as provided in this section:

7 (1) within three years of the end of the  
8 calendar year in which:

9 (a) the payment was originally due or  
10 the overpayment resulted from an assessment by the department  
11 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

12 (b) the final determination of value  
13 occurs with respect to any overpayment that resulted from a  
14 disapproval by any agency of the United States or the state of  
15 New Mexico or any court of increase in value of a product  
16 subject to taxation under the Oil and Gas Severance Tax Act,  
17 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
18 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
19 or the Natural Gas Processors Tax Act; or

20 (c) property was levied upon pursuant to  
21 the provisions of the Tax Administration Act;

22 (2) when an amount of a claim for credit under  
23 the provisions of the Investment Credit Act, Laboratory  
24 Partnership with Small Business Tax Credit Act, Technology Jobs  
25 Tax Credit Act, Capital Equipment Tax Credit Act or similar act

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1 or for the rural job tax credit pursuant to Sections 7-2E-1 and  
2 7-2E-2 NMSA 1978 or similar credit has been denied, the  
3 taxpayer may claim a refund of the credit no later than one  
4 year after the date of the denial;

5 (3) when a taxpayer under audit by the  
6 department has signed a waiver of the limitation on assessments  
7 on or after July 1, 1993 pursuant to Subsection F of Section  
8 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
9 the same tax paid for the same period for which the waiver was  
10 given, until a date one year after the later of the date of the  
11 mailing of an assessment issued pursuant to the audit, the date  
12 of the mailing of final audit findings to the taxpayer or the  
13 date a proceeding is begun in court by the department with  
14 respect to the same tax and the same period;

15 (4) if the payment of an amount of tax was not  
16 made within three years of the end of the calendar year in  
17 which the original due date of the tax or date of the  
18 assessment of the department occurred, a claim for refund of  
19 that amount of tax can be made within one year of the date on  
20 which the tax was paid; or

21 (5) when a taxpayer has been assessed a tax on  
22 or after July 1, 1993 under Subsection B, C or D of Section  
23 7-1-18 NMSA 1978 and when the assessment applies to a period  
24 ending at least three years prior to the beginning of the year  
25 in which the assessment was made, the taxpayer may claim a

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1 refund for the same tax for the period of the assessment or for  
2 any period following that period within one year of the date of  
3 the assessment unless a longer period for claiming a refund is  
4 provided in this section.

5 E. No credit or refund shall be allowed or made to  
6 any person claiming a refund of gasoline tax under Section  
7 7-13-11 NMSA 1978 unless notice of the destruction of the  
8 gasoline was given the department within thirty days of the  
9 actual destruction and the claim for refund is made within six  
10 months of the date of destruction. No credit or refund shall  
11 be allowed or made to any person claiming a refund of gasoline  
12 tax under Section 7-13-17 NMSA 1978 unless the refund is  
13 claimed within six months of the date of purchase of the  
14 gasoline and the gasoline has been used at the time the claim  
15 for refund is made.

16 F. If, as a result of an audit by the internal  
17 revenue service or the filing of an amended federal return  
18 changing a prior election or making any other change for which  
19 federal approval is required by the Internal Revenue Code, any  
20 adjustment of federal tax is made with the result that there  
21 would have been an overpayment of tax if the adjustment to  
22 federal tax had been applied to the taxable period to which it  
23 relates, claim for credit or refund of only that amount based  
24 on the adjustment may be made as provided in this section  
25 within one year of the date of the internal revenue service

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1     audit adjustment or payment of the federal refund or within the  
2     period limited by Subsection D of this section, whichever  
3     expires later. Interest computed at the rate specified in  
4     Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on  
5     any such claim for refund from the date one hundred twenty days  
6     after the claim is made until the date the final decision to  
7     grant the credit or refund is made.

8             G. If as a result of an audit by the department or  
9     a managed audit covering multiple periods an overpayment of tax  
10    is found in any period under the audit, that overpayment may be  
11    credited against an underpayment of the same tax found in  
12    another period under audit pursuant to Section 7-1-29 NMSA  
13    1978, provided that the taxpayer files a claim for refund for  
14    the overpayments identified in the audit.

15            H. Any refund of tax paid under any tax or tax act  
16    administered under Subsection B of Section 7-1-2 NMSA 1978 may  
17    be made, at the discretion of the department, in the form of  
18    credit against future tax payments if future tax liabilities in  
19    an amount at least equal to the credit amount reasonably may be  
20    expected to become due.

21            I. For the purposes of this section, the term "oil  
22    and gas tax return" means a return reporting tax due with  
23    respect to oil, natural gas, liquid hydrocarbons or carbon  
24    dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil  
25    and Gas Conservation Tax Act, the Oil and Gas Emergency School

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1 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the  
2 Natural Gas Processors Tax Act or the Oil and Gas Production  
3 Equipment Ad Valorem Tax Act.

4 J. The filing of a fully completed original income  
5 tax return, corporate income tax return, corporate income and  
6 franchise tax return, estate tax return or special fuel excise  
7 tax return that shows a balance due the taxpayer or a fully  
8 completed amended income tax return, an amended corporate  
9 income tax return, an amended corporate income and franchise  
10 tax return, an amended estate tax return, an amended special  
11 fuel excise tax return or an amended oil and gas tax return  
12 that shows a lesser tax liability than the original return  
13 constitutes the filing of a claim for refund for the difference  
14 in tax due shown on the original and amended returns.

15 K. For the purposes of this section:

16 (1) "protective claim" means a claim for a  
17 refund filed by a person asserting that the person's  
18 entitlement to a refund will be established by a final decision  
19 of a New Mexico court of competent jurisdiction on a claim for  
20 a refund or protest previously filed by that person or another;  
21 and

22 (2) "lead case" means the previously filed  
23 claim or protest described in Paragraph (1) of this subsection.

24 L. Disposition of a protective claim shall be  
25 postponed until a final decision is reached in the lead case."

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1           Section 14.   Section 7-1-67 NMSA 1978 (being Laws 1965,  
2 Chapter 248, Section 68, as amended) is amended to read:

3           "7-1-67.   INTEREST ON DEFICIENCIES. --

4           A.   If a tax imposed is not paid on or before the  
5 day on which it becomes due, interest shall be paid to the  
6 state on that amount from the first day following the day on  
7 which the tax becomes due, without regard to any extension of  
8 time or installment agreement, until it is paid, except that:

9                   (1)   for income tax imposed on a member of the  
10 armed services of the United States serving in a combat zone  
11 under orders of the president of the United States, interest  
12 shall accrue only for the period beginning the day after any  
13 applicable extended due date if the tax is not paid;

14                   (2)   if the amount of interest due at the time  
15 payment is made is less than one dollar (\$1.00), then no  
16 interest shall be due;

17                   (3)   if demand is made for payment of a tax,  
18 including accrued interest, and if the tax is paid within ten  
19 days after the date of the demand, no interest on the amount  
20 paid shall be imposed for the period after the date of the  
21 demand;

22                   (4)   if a managed audit is completed by the  
23 taxpayer on or before the date required, as provided in the  
24 agreement for the managed audit, and payment of any tax found  
25 to be due is made in full within thirty days of the date the

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1 secretary has mailed or delivered an assessment for the tax to  
2 the taxpayer, no interest shall be due on the assessed tax;

3 (5) when, as the result of an audit or a  
4 managed audit, an overpayment of a tax is credited against an  
5 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,  
6 interest shall accrue from the date the tax was due until the  
7 tax is deemed paid;

8 (6) if the department does not issue an  
9 assessment for the tax program and period within the time  
10 provided in Subsection D of Section 7-1-11.2 NMSA 1978,  
11 interest shall be paid from the first day following the day on  
12 which the tax becomes due until the tax is paid, excluding the  
13 period between either:

14 (a) the one hundred eightieth day after  
15 giving a notice of outstanding records or books of account and  
16 the date of the assessment of the tax; or

17 (b) the ninetieth day after the  
18 expiration of the additional time requested by the taxpayer to  
19 comply, if such request was granted, and the date of the  
20 assessment of the tax; and

21 (7) if the taxpayer was not provided with  
22 proper notices as required in Section 7-1-11.2 NMSA 1978,  
23 interest shall be paid from the first day following the day on  
24 which the tax becomes due until the tax is paid, excluding the  
25 period between one hundred eighty days prior to the date of

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1 assessment and the date of assessment.

2 B. Interest due to the state under Subsection A or  
3 ~~[D]~~ E of this section shall be:

4 (1) through December 31, 2004, at the rate of  
5 fifteen percent a year, computed on a daily basis ~~[provided~~  
6 ~~that]~~;

7 (2) from January 1, 2005 through December 31,  
8 2006, at the rate of ten percent a year computed on a daily  
9 basis; and

10 (3) on and after January 1, 2007, at the  
11 underpayment rate for the period determined in accordance with  
12 Section 6621 of the Internal Revenue Code.

13 C. If a different rate than the rate established by  
14 Subsection B of this section is specified by a compact or other  
15 interstate agreement to which New Mexico is a party, ~~[that]~~ the  
16 rate specified by the compact or other agreement shall be  
17 applied to amounts due under the compact or other agreement.

18 ~~[C-]~~ D. Nothing in this section shall be construed  
19 to impose interest on interest or interest on the amount of any  
20 penalty.

21 ~~[D-]~~ E. If any tax required to be paid in  
22 accordance with Section 7-1-13.1 NMSA 1978 is not paid in the  
23 manner required by that section, interest shall be paid to the  
24 state on the amount required to be paid in accordance with  
25 Section 7-1-13.1 NMSA 1978. If interest is due under this

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1 subsection and is also due under Subsection A of this section,  
2 interest shall be due and collected only pursuant to Subsection  
3 A of this section. "

4 Section 15. Section 7-1-68 NMSA 1978 (being Laws 1965,  
5 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,  
6 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended  
7 to read:

8 "7-1-68. INTEREST ON OVERPAYMENTS. --

9 A. As provided in this section, interest shall be  
10 allowed and paid on the amount of tax overpaid by a person that  
11 is subsequently refunded or credited to that person.

12 B. Interest on overpayments of tax shall accrue and  
13 be paid:

14 (1) through December 31, 2004, at the rate of  
15 fifteen percent a year, computed on a daily basis [~~provided~~  
16 ~~that~~];

17 (2) from January 1, 2005 through December 31,  
18 2006, at the rate of ten percent a year computed on a daily  
19 basis; and

20 (3) on and after January 1, 2007, at the  
21 underpayment rate for the period determined in accordance with  
22 Section 6621 of the Internal Revenue Code.

23 C. If a different rate than the rate established by  
24 Subsection B of this section is specified by a compact or other  
25 interstate agreement to which New Mexico is a party, [~~that~~] the

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1 rate specified by the compact or other agreement shall apply to  
2 amounts due under the compact or other agreement.

3 [~~C.~~] D. Unless otherwise provided by this section,  
4 interest on an overpayment not arising from an assessment by  
5 the department shall be paid from the date of the claim for  
6 refund until a date preceding by not more than thirty days the  
7 date of the credit or refund to any person; interest on an  
8 overpayment arising from an assessment by the department shall  
9 be paid from the date of overpayment until a date preceding by  
10 not more than thirty days the date of the credit or refund to  
11 any person.

12 E. Interest on a refund or credit of tax paid on a  
13 deduction initially disallowed by the department for failure to  
14 produce a proper nontaxable transaction certificate or not  
15 claimed by the taxpayer on a timely filed original return shall  
16 be paid from the date on which the taxpayer produces to the  
17 department proof that the nontaxable transaction certificate  
18 has been obtained.

19 [~~D.~~] F. No interest shall be allowed or paid with  
20 respect to an amount credited or refunded if:

21 (1) the amount of interest due is less than  
22 one dollar (\$1.00);

23 (2) the credit or refund is made within:

24 (a) fifty-five days of the date of the  
25 claim for refund of income tax, pursuant to either the Income

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1 Tax Act or the Corporate Income and Franchise Tax Act for the  
2 tax year immediately preceding the tax year in which the claim  
3 is made; or

4 (b) seventy-five days of the date of the  
5 claim for refund of gasoline tax to users of gasoline off the  
6 highways;

7 (3) the credit or refund is made within one  
8 hundred twenty days of the date of the claim for refund of  
9 income tax, pursuant to the Income Tax Act or the Corporate  
10 Income and Franchise Tax Act, for any tax year more than one  
11 year prior to the year in which the claim is made;

12 (4) Sections 6611(f) and 6611(g) of the  
13 Internal Revenue Code, as those sections may be amended or  
14 renumbered, prohibit payment of interest for federal income tax  
15 purposes;

16 (5) the credit or refund is made within sixty  
17 days of the date of the claim for refund of any tax other than  
18 income tax;

19 (6) the credit results from overpayments found  
20 in an audit of multiple reporting periods and applied to  
21 underpayments found in that audit or refunded as a net  
22 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
23 1978;

24 (7) the department applies the credit or  
25 refund to an intercept program, to the taxpayer's estimated

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1 payment prior to the due date for the estimated payment, or to  
2 offset prior liabilities of the taxpayer pursuant to Subsection  
3 E of Section 7-1-29 NMSA 1978; [~~or~~]

4 (8) the credit or refund results from  
5 overpayments the department finds pursuant to Subsection F of  
6 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
7 taxpayer on the return; or

8 (9) the credit or refund is in settlement of a  
9 protective claim, as defined in Section 7-1-26 NMSA 1978;  
10 provided that interest shall be paid with respect to the period  
11 from the date of the final unappealable decision in the lead  
12 case until a date preceding by not more than thirty days the  
13 date the credit or refund is paid on the protective claim.

14 [~~E-~~] G. Nothing in this section shall be construed  
15 to require the payment of interest upon interest. "

16 Section 16. Section 7-1-69 NMSA 1978 (being Laws 1965,  
17 Chapter 248, Section 70, as amended) is amended to read:

18 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A  
19 RETURN. --

20 A. Except as provided in Subsection C of this  
21 section, in the case of failure due to negligence or disregard  
22 of department rules and regulations, but without intent to  
23 evade or defeat a tax, to pay when due the amount of tax  
24 required to be paid, to pay in accordance with the provisions  
25 of Section 7-1-13.1 NMSA 1978 when required to do so or to file

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1 by the date required a return regardless of whether a tax is  
2 due, there shall be added to the amount assessed a penalty in  
3 an amount equal to the greater of:

4 (1) two percent per month or any fraction of a  
5 month from the date the tax was due multiplied by the amount of  
6 tax due but not paid, not to exceed ten percent of the tax due  
7 but not paid;

8 (2) two percent per month or any fraction of a  
9 month from the date the return was required to be filed  
10 multiplied by the tax liability established in the late return,  
11 not to exceed ten percent of the tax liability established in  
12 the late return; or

13 (3) a minimum of [~~five dollars (\$5.00)~~]  
14 twenty-five dollars (\$25.00), but the [~~five dollar (\$5.00)~~]  
15 minimum penalty shall not apply to taxes levied under the  
16 Income Tax Act or taxes administered by the department pursuant  
17 to Subsection B of Section 7-1-2 NMSA 1978.

18 B. No penalty shall be assessed against a taxpayer  
19 if the failure to pay an amount of tax when due results from a  
20 mistake of law made in good faith and on reasonable grounds.

21 C. If a different penalty is specified in a compact  
22 or other interstate agreement to which New Mexico is a party,  
23 the penalty provided in the compact or other interstate  
24 agreement shall be applied to amounts due under the compact or  
25 other interstate agreement at the rate and in the manner

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1 prescribed by the compact or other interstate agreement.

2 D. In the case of failure, with willful intent to  
3 evade or defeat a tax, to pay when due the amount of tax  
4 required to be paid, there shall be added to the amount fifty  
5 percent of the tax or a minimum of [~~twenty-five dollars~~  
6 ~~(\$25.00)~~] one hundred fifty dollars (\$150), whichever is  
7 greater, as penalty.

8 E. If demand is made for payment of a tax,  
9 including penalty imposed pursuant to this section, and if the  
10 tax is paid within ten days after the date of such demand, no  
11 penalty shall be imposed for the period after the date of the  
12 demand with respect to the amount paid.

13 F. If a taxpayer makes electronic payment of a tax  
14 but the payment does not include all of the information  
15 required by the department pursuant to the provisions of  
16 Section 7-1-13.1 NMSA 1978 and if the department does not  
17 receive the required information within five business days from  
18 the later of the date a request by the department for that  
19 information is received by the taxpayer or the due date, the  
20 taxpayer shall be subject to a penalty of two percent per month  
21 or any fraction of a month from the fifth day following the  
22 date the request is received. If a penalty is imposed under  
23 Subsection A of this section with respect to the same  
24 transaction for the same period, no penalty shall be imposed  
25 under this subsection.

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- 1                   G. No penalty shall be imposed on:
- 2                   (1) tax due in excess of tax paid in
- 3 accordance with an approved estimated basis pursuant to Section
- 4 7-1-10 NMSA 1978;
- 5                   (2) tax due as the result of a managed audit;
- 6 or
- 7                   (3) tax that is deemed paid by crediting
- 8 overpayments found in an audit or managed audit of multiple
- 9 periods pursuant to Section 7-1-29 NMSA 1978. "

10           Section 17. Section 7-1-70 NMSA 1978 (being Laws 1965,

11 Chapter 248, Section 71, as amended) is amended to read:

12           "7-1-70. CIVIL PENALTY FOR BAD CHECKS. --If any payment

13 required to be made by provision of the Tax Administration Act

14 is attempted to be made by check that is not paid upon

15 presentment, such dishonor is presumptive of negligence. The

16 penalty shall never be less than [~~ten dollars (\$10.00)~~] twenty-

17 five dollars (\$25.00). This penalty is in addition to any

18 other penalty imposed by law. "

19           Section 18. Section 7-9-43 NMSA 1978 (being Laws 1966,

20 Chapter 47, Section 13, as amended) is amended to read:

21           "7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER

22 EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS [~~RENEWAL~~]. --

23           A. All nontaxable transaction certificates of the

24 appropriate series executed by buyers or lessees should be in

25 the possession of the seller or lessor for nontaxable

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1 transactions at the time the return is due for receipts from  
2 the transactions. If the seller or lessor is not in possession  
3 of the required nontaxable transaction certificates [~~within~~  
4 ~~sixty days from the date that the notice requiring possession~~  
5 ~~of these nontaxable transaction certificates is given the~~  
6 ~~seller or lessor by the department~~] on a date not later than  
7 thirty days prior to the date of a formal hearing on a protest  
8 that requires the documents to establish the taxpayer's  
9 entitlement to a deduction under protest, the deductions  
10 claimed by the seller or lessor that require delivery of these  
11 nontaxable transaction certificates shall be disallowed. The  
12 nontaxable transaction certificates shall contain the  
13 information and be in a form prescribed by the department. The  
14 department by regulation may deem to be nontaxable transaction  
15 certificates documents issued by other states or the multistate  
16 tax commission to taxpayers not required to be registered in  
17 New Mexico. Only buyers or lessees who have a registration  
18 number or have applied for a registration number and have not  
19 been refused one under Subsection C of Section 7-1-12 NMSA 1978  
20 shall execute nontaxable transaction certificates issued by the  
21 department. If the seller or lessor has been given an  
22 identification number for tax purposes by the department, the  
23 seller or lessor shall disclose that identification number to  
24 the buyer or lessee prior to or upon acceptance of a nontaxable  
25 transaction certificate. When the seller or lessor accepts a

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1 nontaxable transaction certificate [~~within the required time~~  
2 ~~and~~] in good faith that the buyer or lessee will employ the  
3 property or service transferred in a nontaxable manner, the  
4 properly executed nontaxable transaction certificate shall be  
5 conclusive evidence, and the only material evidence, that the  
6 proceeds from the transaction are deductible from the seller's  
7 or lessor's gross receipts.

8 B. Notwithstanding any other provision of the Gross  
9 Receipts and Compensating Tax Act, when a seller or lessor  
10 required to have a nontaxable transaction certificate to claim  
11 a deduction is unable to obtain the required nontaxable  
12 transaction certificate because the buyer or lessee has  
13 initiated bankruptcy proceedings under federal bankruptcy laws,  
14 is dead or no longer exists as a business entity, the  
15 department shall allow the deduction upon presentation of other  
16 evidence acceptable to the secretary that the taxpayer is  
17 entitled to claim the deduction.

18 [~~B.-~~] C. Properly executed documents required to  
19 support the deductions provided in Sections 7-9-57, 7-9-58 and  
20 7-9-74 NMSA 1978 should be in the possession of the seller at  
21 the time the return is due for receipts from the transactions.  
22 If the seller is not in possession of these documents [~~within~~  
23 ~~sixty days from the date that the notice requiring possession~~  
24 ~~of these documents is given to the seller by the department] on~~  
25 a date not later than thirty days prior to the date of a formal

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1 hearing on a protest that requires the documents to establish  
2 the taxpayer's entitlement to any deduction under protest, the  
3 deductions claimed by the seller or lessor that require  
4 delivery of these documents shall be disallowed. These  
5 documents shall contain the information and be in a form  
6 prescribed by the department. When the seller accepts these  
7 documents within the required time and in good faith that the  
8 buyer will employ the property or service transferred in a  
9 nontaxable manner, the properly executed documents shall be  
10 conclusive evidence, and the only material evidence, that the  
11 proceeds from the transaction are deductible from the seller's  
12 gross receipts.

13 ~~[C.— Notice, as used in this section, is sufficient~~  
14 ~~if the notice is mailed or served as provided in Subsection A~~  
15 ~~of Section 7-1-9 NMSA 1978.— Notice by the department under~~  
16 ~~this section shall not be given prior to the commencement of an~~  
17 ~~audit of the seller required to be in possession of the~~  
18 ~~documents.—~~

19 ~~D.— On January 1, 2005, every nontaxable transaction~~  
20 ~~certificate, except for nontaxable transaction certificates of~~  
21 ~~the series applicable to the twelve-year period beginning~~  
22 ~~January 1, 2005 and issued by the department prior to that~~  
23 ~~date, is void with respect to transactions after December 31,~~  
24 ~~2004.— The department shall issue separate series of nontaxable~~  
25 ~~transaction certificates for the twelve-year period beginning~~

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1 ~~January 1, 2005 and for each twelve-year period beginning on~~  
2 ~~January 1 of every twelfth year succeeding calendar year 2005.~~  
3 ~~A series of nontaxable transaction certificates issued by the~~  
4 ~~department for any twelve-year period may be executed by buyers~~  
5 ~~or lessees for transactions occurring within or prior to that~~  
6 ~~twelve-year period but is not valid for transactions occurring~~  
7 ~~after that twelve-year period, except the nontaxable~~  
8 ~~transaction certificates issued by the department for the~~  
9 ~~period January 1, 1992 to December 31, 2001 may be executed by~~  
10 ~~buyers or lessees for transactions occurring prior to December~~  
11 ~~31, 2004. For administrative convenience, the department may~~  
12 ~~accept and approve qualifying applications for the privilege of~~  
13 ~~executing nontaxable transaction certificates and pre-issue~~  
14 ~~certificates of any series within the six-month period~~  
15 ~~immediately preceding the beginning of the twelve-year period~~  
16 ~~to which the series of nontaxable transaction certificates~~  
17 ~~applies.~~

18 E.] D. To exercise the privilege of executing  
19 appropriate nontaxable transaction certificates, a buyer or  
20 lessee shall apply to the department for permission to execute  
21 nontaxable transaction certificates, except with respect to  
22 documents issued by other states or the multistate tax  
23 commission that the department has deemed to be nontaxable  
24 transaction certificates. If a person is shown on the  
25 department's records to be a delinquent taxpayer or to have a

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1 non-filed period, the department may refuse to approve the  
2 application of the person until the person has filed returns  
3 for all non-filed periods and is no longer shown to be a  
4 delinquent taxpayer, and the taxpayer may protest that refusal  
5 pursuant to Section 7-1-24 NMSA 1978. Upon the department's  
6 approval of the application, the buyer or lessee may request  
7 appropriate nontaxable transaction certificates for execution  
8 by the buyer or lessee; provided that if a person is shown on  
9 the department's records to be a delinquent taxpayer or to have  
10 a non-filed period, the department may refuse to issue  
11 nontaxable transaction certificates to the person until the  
12 person has filed returns for all non-filed periods and is no  
13 longer shown to be a delinquent taxpayer. The taxpayer may  
14 protest that refusal pursuant to Section 7-1-24 NMSA 1978. The  
15 department may require a buyer or lessee requesting and  
16 receiving nontaxable transaction certificates for execution by  
17 that buyer or lessee to report to the department the names,  
18 addresses and identification numbers assigned by the department  
19 of the sellers and lessors to whom they have delivered  
20 nontaxable transaction certificates. The department may  
21 require a seller or lessor engaged in business in New Mexico to  
22 report to the department the names, addresses and federal  
23 employer identification numbers or state identification numbers  
24 for tax purposes issued by the department of the buyers or  
25 lessees from whom the seller or lessor has accepted nontaxable

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1 transaction certificates. "

2 Section 19. Section 9-11-6.2 NMSA 1978 (being Laws 1995,  
3 Chapter 31, Section 3) is amended to read:

4 "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,  
5 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS. --

6 A. The secretary is empowered and directed to issue  
7 and file as required by law all regulations, rulings,  
8 instructions or orders necessary to implement and enforce any  
9 provision of any law the administration and enforcement of  
10 which the department, the secretary, any division of the  
11 department or any director of any division of the department is  
12 charged, including all rules and regulations necessary by  
13 reason of any alteration of any such law. In order to  
14 accomplish its purpose, this provision is to be liberally  
15 construed.

16 B. Directives issued by the secretary shall be in  
17 form substantially as follows:

18 (1) regulations shall be written statements of  
19 the secretary of general application, interpreting and  
20 exemplifying or implementing the ~~[statues]~~ statutes to which  
21 they relate and may be issued in response to a request from a  
22 taxpayer or other interested party;

23 (2) rulings shall be written statements of the  
24 secretary, of limited application to one or a small number of  
25 persons, interpreting the statutes to which they relate,

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1 ordinarily issued in response to a request for clarification of  
2 the consequences of a specified set of circumstances;

3 (3) orders shall be written statements of the  
4 secretary or a hearing officer or other delegate of the  
5 secretary to implement a decision after a hearing; and

6 (4) instructions shall be other written  
7 statements or directives of the secretary or secretary's  
8 delegate not dealing with the merits of any law but otherwise  
9 in aid of the accomplishment of the duties of the secretary.

10 C. To be effective, any ruling or regulation issued  
11 by the secretary shall be reviewed by the attorney general or  
12 other legal counsel of the department prior to being filed as  
13 required by law, and the fact of the review shall be indicated  
14 on the ruling or regulation.

15 D. To be effective, a regulation shall first be  
16 issued as a proposed regulation and filed for public inspection  
17 in the office of the secretary. Unless otherwise provided by  
18 statute, no regulation affecting any person or agency outside  
19 the department shall be adopted, amended or repealed without a  
20 public hearing on the proposed action before the secretary or a  
21 hearing officer designated by the secretary. The public  
22 hearing shall be held in Santa Fe unless otherwise permitted by  
23 statute. Notice of the subject matter of the regulation, the  
24 action proposed to be taken, the time and place of the hearing,  
25 the manner in which interested parties may present their views

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1 and the method by which copies of the proposed regulation,  
2 proposed amendment or repeal of an existing regulation may be  
3 obtained shall be published at least thirty days prior to the  
4 hearing date in [a] the New Mexico register and mailed at least  
5 thirty days prior to the hearing date to all persons who have  
6 made a written request for advance notice of hearing. After  
7 the proposed regulation has been on file for not less than  
8 sixty days and a public hearing on the proposed action has been  
9 held by the secretary or a hearing officer designated by the  
10 secretary, the secretary may issue it as a final regulation by  
11 signing the regulation and filing the regulation in the manner  
12 required by law. The secretary shall not delegate the  
13 authority to sign regulations.

14 E. In addition to filing copies of regulations with  
15 the state records center as required by law, the secretary  
16 shall maintain in the office of the secretary a duplicate  
17 official set of current and superseded regulations, a set of  
18 current and superseded rulings and such additional sets of  
19 those regulations and rulings as appear necessary, which  
20 duplicate or additional sets shall be available for inspection  
21 by the public, but superseded regulations need be maintained  
22 for no longer than ten years from the date of supersession.

23 F. The secretary shall develop and maintain a file  
24 of names and addresses of individuals and professional and  
25 industry groups having an interest in the promulgation of new,

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1 revised or proposed regulations. At convenient times, the  
2 secretary shall distribute to these persons all such  
3 regulations and all pertinent rulings, making such charges as  
4 will defray the expense incurred in their physical preparation  
5 and mailing. Such charges are appropriated to the department  
6 to defray the costs of preparing and distributing regulations  
7 and rulings.

8 G. Any regulation, ruling, instruction or order  
9 issued by the secretary or order or instruction issued by a  
10 hearing officer or other delegate of the secretary is presumed  
11 to be a proper implementation of the provisions of the laws  
12 that are charged to the department, the secretary, any division  
13 of the department or any director of any division of the  
14 department.

15 H. The extent to which regulations, rulings and  
16 orders will have retroactive effect shall be stated and, if no  
17 such statement is made, they will be applied prospectively  
18 only. "

19 Section 20. EFFECTIVE DATE. --

20 A. The effective date of the provisions of Sections  
21 10 through 13 and 16 through 19 of this act is July 1, 2004.

22 B. The effective date of the provisions of Sections  
23 14 and 15 of this act is January 1, 2005.